

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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:
UNITED STATES OF AMERICA, : Criminal Action No.:
: 1:18-cr-123-RDA-4
:
v. :
:
ELMER ZELAYA MARTINEZ, : November 2, 2022
:
Defendant. :
-----x

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ROSSIE D. ALSTON, JR.,
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE GOVERNMENT: ALEXANDER BLANCHARD, AUSA
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United States District Court
401 Courthouse Square
Tenth Floor
Alexandria, VA 22314

P R O C E E D I N G S

(Court proceedings commenced at 11:32 a.m.)

THE COURTROOM CLERK: Criminal No. 2018-123. United States of America versus Elmer Zelaya Martinez.

Counsel, please note your appearance for the record.

THE COURT: Ms. Tinsley, hold him up while -- yeah.

(A pause in the proceedings.)

THE COURT: Okay.

MR. LEIVA: Good morning, Your Honor.

THE COURT: Good morning, sir.

(Interpreter sworn.)

THE INTERPRETER: Maria Horvath, federally certified Spanish interpreter.

THE COURT: Good morning, ma'am.

Let the record reflect that Mr. Blanchard is present for the government. Mr. Manuel Leiva is present for Mr. Elmer Zelaya Martinez. Mr. Elmer Zelaya Martinez is also present.

Mr. Zelaya Martinez, as usual, if at any time the equipment that we're providing to you does not work properly just let us know, let Mr. Leiva know, and we'll do what we can to accommodate you, sir.

Are you having any difficulty understanding the translation at this point, sir?

THE DEFENDANT: (In English) No.

1 THE COURT: Very good, sir.

2 Are there any corrections, deletions, or
3 modifications to the presentence report in this matter?

4 MR. BLANCHARD: No, Your Honor.

5 THE COURT: Ms. Stam is also present for the
6 government. The plexiglass blocked me from seeing her.

7 MS. STAM: Good morning, Your Honor.

8 THE COURT: Good morning, ma'am.

9 Any corrections, deletions, or modifications --

10 MR. LEIVA: Your Honor, good morning, sir. Yes,
11 just a small change that we missed on page 20.

12 THE COURT: Yes, sir.

13 MR. LEIVA: Paragraph 106 where it lists Mr. Zelaya
14 Martinez's son as Elmer. His middle name starts with a J
15 instead of a Y.

16 THE COURT: Okay.

17 MR. LEIVA: Only correction, Your Honor.

18 THE COURT: That slight modification will be made to
19 the record based on the representation of counsel.

20 Is there any evidence from the government?

21 MR. BLANCHARD: No evidence, Your Honor.

22 THE COURT: Any evidence, Mr. Leiva?

23 MR. LEIVA: No, Your Honor.

24 THE COURT: All right. I'll hear from the
25 government on argument.

1 MR. BLANCHARD: Your Honor, thank you.

2 This is the 14th time that the government has come
3 before the Court for a sentencing in connection with this
4 case. The facts and tragedy of which are especially
5 well-known to the Court.

6 Of course each defendant who has appeared before
7 Your Honor to answer for participating in the murders of Edwin
8 and Sergio is different, and notwithstanding the mandatory
9 life sentences that the Court has been obligated to impose on
10 the vast majority of those defendants, each is entitled to and
11 has received individualized consideration.

12 Today, the Court must determine what constitutes
13 just punishment for the defendant, Elmer Zelaya Martinez. Of
14 all the people who contributed to Edwin's and Sergio's
15 untimely and gruesome deaths, the defendant is, in the
16 government's view, the most culpable.

17 When he played a leading role in conceiving,
18 planning, and executing the murders of the two teenaged
19 victims, the defendant was a grown man. Of those who started
20 the fatal attacks of Edwin and Sergio, the defendant was the
21 oldest and the largest. Indeed he stood approximately half a
22 foot taller than the victims. And in the case of Sergio
23 weighed nearly twice as much.

24 In August and September of 2016, when he should have
25 been taking care of his own children, the defendant lured and

1 butchered Edwin and Sergio. And for what? What was the
2 purpose of snuffing out the lives of those boys on the
3 defendants' rationales?

4 So that the defendant could climb the ladder and
5 become the first word of his clique of MS-13. A gang, as the
6 Court well knows, seems to perpetrate violence for violence
7 sake alone. In this case, the defendant underscored his
8 inequity in the aftermath of both murders, bragging and
9 boasting about his crimes.

10 I can only assume that the United States indignation
11 means nothing to the defendant and I expect that when he's
12 afforded an opportunity to allocute in a few moments the
13 defendant, on the advice of counsel, will say nothing of
14 substance, if he speaks at all. That is his right. He might
15 not be obligated to utter any words but he can listen to them.

16 The defendant should hear directly from the victims'
17 family members who regrettably cannot be here today to address
18 him directly. In a statement submitted to the Court one of
19 Edwin's family members wrote "I want justice, justice. I have
20 a pain so big in my heart, an emptiness, a sadness, and a hate
21 that is so profound in my heart."

22 Sergio's mother, Carla, also submitted a statement
23 and excerpts of which with the Court's indulgence, I'd like to
24 read. She wrote in part, "Everything began with hope, faith,
25 and a lot of excitement about leaving my country, Honduras, to

1 leave behind the suffering we came here with the hope of
2 starting over.

3 Sergio was a boy full of love with his family. He
4 was very affectionate and was always laughing about
5 everything. He had many dreams he was unable to accomplish
6 because they were taken from him just as he was starting to
7 live. My life and my two-year-old daughter's life changed
8 completely after September 26, 2016, at 8:00 p.m. when Sergio
9 went out to throw out the trash and never returned. That day
10 was a Monday and he was with me all day. He accompanied me to
11 my five-month prenatal checkup for my pregnancy and was happy
12 wishing for a male brother who he could show how to play
13 soccer. He was a good boy who made mistakes as an adolescent
14 but he dreamt about good things. When one day my son never
15 returned, my anguish was big and I reported him missing. But
16 my weight and anguish was prolonged for seven hard months. I
17 would miss days of work looking for my son. My days became
18 long and that's without the months I spent without sleeping
19 with so much anguish where I almost lost my baby. But I did
20 not lose the hope of finding him one day and for him to tell
21 me: Mommy, I am fine and I am here at home.

22 The detectives called me asking if they could come
23 to my home on April 7, 2017. They gave me the terrible news
24 that my son, Sergio, had died. My world fell apart and
25 multiplied into pieces after thinking my son was never going

1 to return and not knowing what I was going to tell my daughter
2 when she asked for her brother. The hardest part was asking
3 where he was. Where he was found. And knowing that I'd never
4 see him again being dead as a result of the terrible and
5 atrocious death given to him by those people without a soul
6 and scruples.

7 I know that Sergio will not return but at least
8 there will be justice on his behalf for all the suffering that
9 they caused him. Even with that, they still can't pay for the
10 suffering they have caused my daughter, who still waits for
11 him while looking out the window and asking why her brother
12 left and left us.

13 In the end, Your Honor, the applicable statutes
14 require that the defendant spend the rest of his life in
15 prison. But here, that outcome is equally compelled by
16 justice. Justice for Edwin, justice for Sergio, and justice
17 for their families. Thank you.

18 THE COURT: Thank you, sir. Mr. Leiva.

19 MR. LEIVA: May it please the Court, Your Honor.
20 Your Honor, these sentencings here on these types of cases are
21 always difficult. Because the statutes do mandate a life
22 sentence for my client. Counsel started off with asking the
23 Court for just punishment and after doing several of these
24 cases it's become clear to me that it's really in the eye of
25 the beholder of what is just punishment. And I'll give an

1 example in this case.

2 In this case, we had the co-defendant, Ronald
3 Herrera, who was debriefed by the government at least 8 or 10
4 times and took the government to the bodies. He hasn't been
5 sentenced to life. Whereas you have Vijel, who, as the Court
6 remembers, was Horror and held a leadership position in this
7 clique, who took his pregnant girlfriend, 15-year old pregnant
8 girlfriend, to one of the murders. He's going to get out in
9 20 or 30 years. And I'm sure Your Honor has seen multiple
10 cases where that is the case as well that sometimes the most
11 culpable get to be free some day, whereas the lower-ranking
12 members don't.

13 In this case, Your Honor, you heard evidence about
14 Moris Castro. He was the young man that started the rumor
15 about Sergio which led to other members of the clique
16 believing that Sergio had cooperated with the police. And you
17 heard from Morris's own mouth saying that he started that to
18 deflect any attention on him because he was in fact
19 cooperating with the police. And what was striking about
20 Moris Castro, Your Honor, is that even though he started these
21 false rumors, which led to the death of his friend, he
22 actually even participated knowing that he started these false
23 rumors. And Moris Castro will not be facing life either, Your
24 Honor.

25 These young men who decide to enter into this world

1 they follow this code that's imposed upon them by the gang.
2 And for whatever reason they believe that that's the code that
3 they must follow. And unfortunately following that code leads
4 them here. Leads them to a court, leads them to be sentenced,
5 and leads that their young lives are extinguished. My client
6 knows that he will die in prison, he knows that he will never
7 be able to hold his two children. And some day I hope that
8 the powers that be fund programs which help young men not join
9 gangs. I think all of us who do this understand what causes
10 them to join gangs.

11 THE COURT: And if I could ask you a question here,
12 Mr. Leiva, because, as Mr. Blanchard pointed out, I've had
13 more than ten individuals who are implicated in these actions
14 appear before the Court in various stages of sentencing and
15 the like.

16 And I might be wrong on this, but I think I'm not.
17 All of them, every single one of them had some, shall we say,
18 family dysfunction in El Salvador which contributed to them
19 maybe going down this path. But as I read the report
20 involving Mr. Zelaya Martinez, it doesn't appear that he had
21 those same challenges, that he came from "a good family." I'm
22 using that in air quotes, obviously. That he had a mother and
23 a father who were there to support him. That he had some
24 skills and some abilities and didn't have to suffer some of
25 the difficulties that other young men from El Salvador,

1 transplanted to the United States, had to suffer, but yet and
2 still he ended up in these circumstances. So the situation is
3 very different. And if I'm wrong on what I'm saying, correct
4 me.

5 MR. LEIVA: I would say, Your Honor, there's a
6 spectrum and I think the Court can take into consideration
7 that with his particular family, you have two young men who
8 participated or allegedly participated --

9 THE COURT: Henry and Elmer, yeah.

10 MR. LEIVA: Yes. And I think the Court can deduce
11 from that certain information.

12 THE COURT: But I think in the record as we
13 conducted Henry's sentencing it was clear that Henry did
14 not -- had more challenges personally, I'll just say it that
15 way, than Elmer did.

16 MR. LEIVA: I won't say I agree with that because
17 again I wasn't privy to some of those discussions.

18 THE COURT: I'm not misrepresenting that.

19 MR. LEIVA: No, I'm not suggesting that you are,
20 Your Honor. What's difficult about these cases as well, Your
21 Honor, is that when you have -- and I'll use the word
22 "indoctrinated" with some of this code or this -- rules that
23 are imposed on them by the gang, they're also very careful
24 with what they disclose. My experience has been that -- and
25 this is not related to Elmer. My experience has been that

1 when you represent young men, especially in this particular
2 gang, they are thinking two to three steps ahead of you, as
3 far as what is my life going to be like once I am sentenced.
4 Am I going to be able to walk into that prison with my, for
5 lack of a better term, my head held up high.

6 And it's very difficult doing these kind of cases
7 because you have to win the trust of your client, and
8 sometimes convince them that being vulnerable or opening up to
9 you is to their benefit when everything up to that point,
10 which has led them to there, suggests otherwise.

11 THE COURT: And Mr. Leiva, you are in a unique
12 situation and the Court appreciates the unique situation that
13 you hold and that you're able to speak the language, that you
14 understand the culture, and I think to be fair it has to be
15 pointed out that the hard work that you and Mr. Jenkins put in
16 to deauthorize the seeking of the death penalty in this case
17 is significant. And if you haven't gained trust through those
18 Herculean efforts, I don't know if you can ever get any trust.
19 This young men was facing the possibility of the death
20 sentence and you all, through your hard work, were able to
21 lobby the United States Attorney's Office, or excuse me, the
22 Attorney General's Office to seek a circumstance where your
23 client was not facing the death penalty. And that is an
24 incredible feat in cases such as this and you are to be
25 applauded for that. And if Mr. Elmer Zelaya Martinez doesn't

1 trust you now, then he's never going to trust you.

2 MR. LEIVA: Well, again, Your Honor, there's
3 different levels, right. And again, I guess the point I'm
4 trying to make, Your Honor, is that certain things I think
5 that young men who are involved in gangs wish they could say
6 to us are not said to us because in the end they know that
7 they have to face those same gang members. And unfortunately,
8 there's this code of conduct, let's say. And it makes it
9 difficult sometimes.

10 THE COURT: I get it.

11 MR. LEIVA: But I will tell Your Honor that
12 Mr. Zelaya Martinez did read the letters provided by the
13 family members of the victims. He did view every photo, and
14 that, at least to me, was important. Very rarely do I have
15 clients who, one, review those letters. They usually ask me
16 can you just summarize what they said, but he actually took
17 the time and effort to read those letters and look at the
18 pictures. And as Your Honor knows from the presentence
19 investigation, some of those photographs were these young men,
20 the victims, when they were young. I'm sure that had an
21 impact on Mr. Zelaya Martinez given that he's a father of two
22 young children as well. But as I said, Your Honor, this is a
23 difficult case.

24 THE COURT: I understand, sir.

25 MR. LEIVA: Thank you, Your Honor.

1 THE COURT: Thank you, sir.

2 Mr. Zelaya Martinez, you may stand, sir. I'm sure
3 your counsel has advised you as to the circumstances that
4 you're facing as far as saying anything in open court and I'm
5 not requiring you to say anything, but if you would like to
6 say something to me, as far as your sentencing is concerned,
7 I'll be more than happy to hear it, sir.

8 THE DEFENDANT: No.

9 THE COURT: All right, sir, that is your right. You
10 may have a seat, sir.

11 Under the sentencing guidelines, the base offense
12 level is 43. Because the defendant was an organizer or a
13 leader of a criminal activity that involved five or more
14 participants or was otherwise extensive, four levels are added
15 pursuant to the guidelines.

16 Pursuant to Chapter 5, part A, comment note 2 of the
17 guidelines, in those rare instances where the offense level is
18 calculated in excess of 43, the offense level will be treated
19 as a Level 43. Therefore, the defendant's criminal offense
20 level is 43. The criminal history score is 1 and the criminal
21 history category is Roman Numeral 1. Accordingly, the
22 applicable guideline range is life imprisonment. The
23 supervised release range is three to five years under the
24 guidelines. The fine range is \$50,000 to \$250,000. Pursuant
25 to 18 U.S.C. Section 3553(a), the Court should consider the

1 following:

2 The nature and circumstances of the offense, and the
3 history and characteristics of the defendant, the need for the
4 sentence imposed to, among other things, reflect the
5 seriousness of the offense and adequately deter criminal
6 conduct, the kinds of sentences available, the guidelines,
7 policy statements issued by the Sentencing Commission, the
8 need to avoid unwarranted sentence disparities among
9 defendants with similar records found guilty of similar
10 conduct. And finally, the need to provide restitution to the
11 victims of the offense. Ultimately, under the *Booker*
12 standard, the sentence must meet a standard of reasonableness.

13 With regard to the Section 3553(a) factors, the
14 history and characteristics of the defendant, the Court has
15 considered defendant's personal background and some of the
16 difficulties he may have encountered. As for the nature and
17 circumstances of the offense, suffice it to say that murder is
18 a reprehensible crime. A jury found that the defendant
19 committed the murders of Edwin Mendez and Sergio Triminio and
20 the evidence attests to the severity of the defendant's crime.

21 The defendant, as represented by the government, can
22 in many respects, be viewed as a leader and organizer of these
23 crimes. He wielded his power and influence within the gang to
24 commit terrible crimes and spurred others to do the same. He
25 chose to commit himself to criminal activity and his choices

1 took the lives of others. These horrible offenses,
2 particularly in light of the manner in which the defendant and
3 his co-conspirators carried them out, as found by the jury,
4 warrants a sentence of life imprisonment.

5 The Court considers next the need for the sentence
6 imposed to reflect the seriousness of the offense, to promote
7 respect for the law, and to provide just punishment for the
8 offense, to afford adequate deterrence to criminal conduct, to
9 protect the public from further crimes of the defendant, and
10 to provide the defendant with needed educational or vocational
11 training, medical care, or other correctional treatment in the
12 most effective manner.

13 Applying these factors to the case, the Court finds
14 that a sentence of life imprisonment sufficiently reflects the
15 seriousness of the defendant's offense and will promote both
16 specific and general deterrence. As indicated earlier, the
17 guideline range for such an offense is life imprisonment. A
18 sentence of life imprisonment on Counts 3 through 8 will not
19 create unwarranted sentencing disparities. The sentence is
20 also consistent with the sentence imposed for other defendants
21 who have committed similar offenses including co-defendants:
22 Henry Zelaya Martinez and Douglas Ramirez Ferrera.

23 Accordingly, on Counts 1 and 2, conspiracy to commit
24 kidnapping and murder, the Court imposes a term of 120 months
25 on each count which shall run concurrently.

1 On Counts 3 through 8, the Court imposes a term of
2 life imprisonment on each count, which shall also run
3 concurrently.

4 While the Court understands the defendant requests a
5 term of years rather than life imprisonment, in exercising the
6 Court's discretion in these circumstances as to Counts 5
7 through 8, the Court finds that applying Section 3553(a)
8 factors to defendant's offense indeed warrants a sentence of
9 life imprisonment on Counts 3 and 4 as well.

10 The Court also imposes a period of supervised
11 release to provide adequate measures of deterrence and
12 protection based on the factors and circumstances of this
13 particular case, again, consistent with the guidelines.

14 Should the defendant ever be released from
15 incarceration, he will serve a five-year term of supervised
16 release representing years as to Counts 1 and 2; and 5 years
17 as to Counts 3 through 8. Again, all to run concurrently.

18 During his period of supervised release, the
19 defendant must comply with the standard conditions of
20 probation as have been adopted by the Court. The defendant
21 shall be surrendered to a duly authorized immigration official
22 of the Department of Homeland Security for a deportation
23 review in accordance with established procedures provided by
24 the Immigration and Nationality Act.

25 As a further condition of supervised release --

1 (A pause in the proceedings.)

2 THE COURT: As a further condition of supervised
3 release, if ordered, the defendant shall remain outside the
4 United States of America.

5 If the defendant tests positive for a controlled
6 substance or shows signs of alcohol abuse, the defendant shall
7 participate in a program approved by the United States
8 Probation Office for substance abuse which program may include
9 residential treatment and testing to determine whether the
10 defendant has reverted to the use of drugs or alcohol with
11 partial costs to be paid by the defendant, all as directed by
12 the probation office.

13 The defendant shall not use marijuana or cannabis in
14 any form. The defendant shall not use marijuana or cannabis
15 in any form and shall participate in a program approved by the
16 United States Probation Office for mental health treatment.
17 The cost of this program is to be paid by the defendant again
18 as directed by the probation office.

19 Recognizing that the defendant is likely not capable
20 of paying a fine, the Court will not impose a fine. The Court
21 will impose a special assessment pursuant to statute of \$800,
22 \$100 per felony count. The government has sought in other
23 matters restitution on behalf of the victims in this case and
24 has proposed a date of November 25th -- excuse me,
25 November 28th to provide the restitution. If the government

1 fails in its obligation, the Court will not order restitution.

2 The defendant is advised that he may appeal any
3 portion of this sentence to the appropriate Court.

4 Mr. Leiva, are you going to take on the appeal?

5 MR. LEIVA: No, Your Honor. Mr. Jenkins will.

6 THE COURT: Mr. Jenkins. Well, the Court will
7 appoint Mr. Robert Jenkins to pursue any appeal rights the
8 defendant may wish to pursue. In addition to that, Mr. Leiva,
9 I'm going to direct that you and Mr. Jenkins advise Mr. Zelaya
10 Martinez of any appeal rights that he may have pursuant to the
11 constitution.

12 Mr. Zelaya Martinez, your lawyers have worked very
13 hard for you on this case. Mr. Jenkins and Mr. Leiva are both
14 well-respected practitioners in this Court and they work hard
15 on behalf of their clients. And you may have heard me mention
16 earlier that they worked hard outside of this courtroom to
17 make sure that you were not facing the death penalty and they
18 are to be applauded for their efforts.

19 And so, I'm going to ask you, sir, have you always
20 been entirely satisfied with the services of the attorneys
21 that have been appointed to you by this Court?

22 THE DEFENDANT: (In English.) Yes, sir.

23 THE COURT: Very good, sir.

24 MR. BLANCHARD: Your Honor, on that note. Out of an
25 abundance of caution, would the Court inquire of the defendant

1 whether he has any objection to proceeding to his appeal with
2 just one attorney given his current right to.

3 THE COURT: Sure.

4 Mr. Zelaya Martinez, at one point you had three
5 lawyers representing you. And then when the death penalty was
6 taken off the table Mr. Jenkins and Mr. Leiva were left with
7 the responsibility of representing you. Now that your case is
8 going on appeal, appeal is more of a written thing and arguing
9 before a Court, and typically people do not have two attorneys
10 working on that. And Mr. Jenkins has indicated that he is
11 willing and able, very able, to take on the appeal for you by
12 himself.

13 Are you comfortable with that, sir?

14 MR. LEIVA: Yes, sir.

15 THE COURT: Very good, sir. Thank you for that.

16 Anything else we need to do?

17 MR. LEIVA: Your Honor, to the extent the Court can
18 make a recommendation, Mr. Zelaya is asking if he could be
19 sent to a facility close to this area, Your Honor. Just so
20 his family can --

21 THE COURT: Where is his family?

22 MR. LEIVA: Here, Your Honor, in Alexandria,
23 Virginia.

24 THE COURT: Okay. If you have a specific facility
25 that you would like me to recommend to the Bureau of Prisons,

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20

1 I'd be more than happy to consider it. Typically if I say
2 something close to his family members in the Washington, D.C.
3 metropolitan area that could extend to almost anywhere. So if
4 you have somewhere specifically that you would like me to
5 recommend.

6 MR. LEIVA: I do not, Your Honor. But I perhaps can
7 send something to the Court.

8 THE COURT: Okay. That's fine. Because we're
9 keeping it open essentially to November 28, 2022, in any event
10 for the issue of restitution. So if you can get to me a
11 recommended facility prior to that, the Court will do what it
12 can to accommodate that request.

13 MR. LEIVA: Thank you, sir.

14 THE COURT: All right. Mr. Zelaya Martinez,
15 anything else from you, sir?

16 THE DEFENDANT: No.

17 THE COURT: I remand you to the custody of the
18 United States Marshals.

19 MR. LEIVA: Thank you, Your Honor.

20 THE COURT: Well presented, Counsel. Thank you.

21
22 **(Proceedings adjourned at 12:01 p.m.)**
23
24
25

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Sentencing hearing in the case of the **UNITED STATES OF AMERICA versus ELMER ZELAYA MARTINEZ**, Criminal Action No.: 1:18-cr-123-RDA-4, in said court on the 2nd day of November, 2022.

I further certify that the foregoing 21 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this September 28, 2023.



Tonia M. Harris, RPR
Official Court Reporter